

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

DANIEL OGLESBY,

Movant,

v.

CIVIL ACTION NO. 5:13-cv-00221
(Criminal No. 5:09-cr-00239)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

On January 7, 2013, the Movant filed an *Application to Proceed without Prepayment of Fees and Costs* (Document 85) and a *Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody* (Document 86). By *Standing Order* (Document 88) entered on that date, the matter was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636.

On December 3, 2015, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 93) wherein it is recommended that this Court deny both the *Application to Proceed without Prepayment of Fees and Costs* (Document 85) and the *Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody* (Document 86). Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by December 21, 2015, and none were filed by either party.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Movant's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the Movant's *Application to Proceed without Prepayment of Fees and Costs* (Document 85) be **DENIED**, the Movant's *Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody* (Document 86) be **DENIED**, and this case be **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: January 4, 2016


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA